

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF UTAH**

In the Matter of the Application of :  
AT&T BROADBAND PHONE OF :  
UTAH, LLC for a Certificate of Public :  
Convenience and Necessity to :  
Provide Switched and Dedicated, :                   Docket No. 01-2383-01  
Resold and Facilities-Based Local :  
Exchange and Resold and Facilities- :  
Based Interexchange Services with :  
the State of Utah

**DIRECT TESTIMONY**

**OF**

**THOMAS REGAN**

**ON BEHALF OF THE COMMITTEE OF CONSUMER SERVICES**

**06 January 2003**

1 **I. STATEMENT OF QUALIFICATIONS AND INTRODUCTION**

2  
3

4 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

5 A. My name is Thomas M. Regan. My business address is 8625 Farmington Cemetery  
6 Road, Pleasant Plains, Illinois, 62677.

7

8 **Q. WHAT IS YOUR PRESENT OCCUPATION?**

9 A. I am an Economist with the firm of William Dunkel and Associates. I have been  
10 employed by William Dunkel and Associates since 1994. Since that time, I have  
11 regularly provided professional consulting services in telephone regulatory  
12 proceedings throughout the country.

13

14 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

15 A. I am testifying on behalf of the Utah Committee of Consumer Services (CCS).

16

17 **Q. HAVE YOU PREPARED AN APPENDIX THAT DESCRIBES YOUR**  
18 **QUALIFICATIONS?**

19 A. Yes. My qualifications are shown on Appendix A.

20

21 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY IN THIS**  
22 **PROCEEDING?**

1 A. In my Direct Testimony, I discuss the economic principle of oligopoly and the  
2 Herfindahl-Hirschman Index ("HHI"), which is an economic tool used to evaluate the  
3 level of competition that exists in a market.

4  
5  
6 **Q. WHEN IS A MARKET CONSIDERED TO HAVE EFFECTIVE COMPETITION?**

7 A. The exact level of competition where a market is considered to have effective  
8 competition is difficult to determine. However, there are economic tools that can be  
9 used to evaluate the level of competition that exists in a market. One of these tools  
10 is the Herfindahl-Hirschman Index ("HHI"). In fact, the Utah Public Service  
11 Commission's (Commission) 2002 Report to the Governor and the Legislature on the  
12 Status of Telecommunications Competition in Utah (2002 Report) indicates that the  
13 HHI is a tool that can be used to evaluate the level of competition in a market. Page  
14 13 of the Commission's Report states:

15 Courts and federal agencies acknowledge the existence of market power  
16 when a firm has the ability and incentive to raise or maintain prices above  
17 competitive levels or to achieve other anticompetitive effects. Two economic  
18 measures used to evaluate market power are the Herfindahl-Hirschman Index  
19 ("HHI") and the Effective Firm Index. Both can be used to judge the level of  
20 competition in the industry.

21  
22  
23 **Q. HOW IS THE HHI CALCULATED, AND WHAT HHI IS NEEDED FOR THE**  
24 **MARKET TO BE CONSIDERED COMPETITIVE?**

25 A. The Commission's Report indicates that the HHI must be at .50 or below for the  
26 market to begin to be considered somewhat competitive. Page 13 of the  
27 Commission's Report states the following:

28 HHI measures market concentration by squaring the market share of each  
29 firm competing in the market and summing the results. The HHI increases as

1 the number of firms in the market decreases and as the disparity in size  
2 between those firms increases. An index value of .50 is the necessary  
3 threshold value for the market to begin to be considered somewhat  
4 competitive. (emphasis added)  
5

6 **Q. WHAT IS THE HHI FOR QWEST IN UTAH?**

7 A. According to page 14 of the Commission's 2002 Report, Qwest's HHI for 2002 is  
8 .853 for the overall residential market. Therefore, the overall residential market in  
9 Utah has not "begun to be considered somewhat competitive" under the  
10 Commission's standard.  
11

12 **Q. IS THE HHI USED BY OTHER GOVERNMENT AGENCIES TO TEST FOR**  
13 **THE PRESENCE OF EFFECTIVE COMPETITION?**

14 A. Yes. The HHI is commonly used for testing for the presence of effective  
15 competition. The U.S. Department of Justice and the Federal Trade Commission  
16 use the HHI to measure market concentration. The larger the share of the market in  
17 the hands of fewer service providers in the market, the higher the market  
18 concentration, and the higher the HHI. Those markets with higher concentration are  
19 generally perceived as being more susceptible to misuse of market power and anti-  
20 competitive behavior.  
21

22 **Q. DOES THE EXISTENCE OF AN ALTERNATIVE SERVICE PROVIDER IN A**  
23 **PARTICULAR AREA MEAN THAT THE AREA IS NECESSARILY EFFECTIVELY**  
24 **COMPETITIVE?**

1 A. No. I agree with the Commission's conclusion on page 11 of its 2002 Report to the  
2 Governor and Legislature when it states, "It is not just the number of carriers in each  
3 telecommunications market that defines competition, but also market shares and  
4 perceived quality of service."

5  
6 The fact that two producers may not be sufficient to provide effective price  
7 competition (especially where one has a large market share) is well known. This  
8 situation is described in a standard economics textbook:

9  
10 *Oligopoly.* Whether or not there is identity of products or some differentiation,  
11 if there are but two, three, or a few sellers, they may come to realize that their  
12 prices are closely interrelated. If Corporation A cuts its price, it can win much  
13 business from its rivals. It knows this. They know this. Is it reasonable for A  
14 to proceed on the assumption that its rivals will stand by passively while it  
15 takes away their business? Not really. A will guess, or may soon learn from  
16 experience, that when it cuts its price, its rivals tend to meet or to exceed  
17 such a price cut. Economic warfare may result, until the few sellers come to  
18 realize that they are in the same boat together.

19  
20 Back in the old days before the antitrust laws were important, such  
21 oligopolists might have formed a merger, or a tight little cartel or trust.  
22 Meeting at celebrated dinners, such as those that Judge Gary of the United  
23 States Steel Company held decades ago, the sellers would collusively set  
24 some kind of a monopoly price. A full monopoly price? Sometimes, if they  
25 were sure they could keep newcomers out. But in the more realistic case  
26 where the oligopolists had to take account of the fact that setting a high price  
27 would tempt new rivals into their field, they would agree on a price higher than  
28 the purely competitive one but would moderate their charges for fear of new  
29 entry.

30  
31 Today it would be illegal in the United States, and a few other countries, for  
32 cartels to set prices collusively and shamelessly to maximize their mutual  
33 profits. On the other hand, if a few large firms encounter the same problem,  
34 experience suggests that they may - without ever meeting, phoning, winking,  
35 or corresponding - arrive at a tacit mode of behavior that avoids fierce price  
36 competition. With or without a price leader, the sellers may be quoting rather  
37 similar prices - prices which come nowhere near the level of MC, as in the

1 case of a perfectly competitive industry discussed in Chapter 22.1(citation  
2 omitted).<sup>1</sup>  
3  
4

5 As the above excerpt from a standard economics textbook explains, "if there are but  
6 two, three, or a few sellers" in a market, the companies will soon learn that their  
7 prices are interrelated, and that price competition is simply not in their best interests.  
8

9 When there is a dominant company like Qwest in a particular area, competitors  
10 generally will price its service based upon the dominant company's (i.e. Qwest's)  
11 price. This means that if Qwest increases its price, the competitors may increase  
12 their own prices. Both firms are better off, but the public is worse off. Because this  
13 is the nature of markets with few sellers, a maximum price is needed to protect the  
14 public from oligopolistic pricing behavior.  
15

16 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

17 A. Yes.

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<sup>1</sup> Economics: An Introductory Analysis by Paul A. Samuelson, Sixth Edition, pp. 492-493.

Thomas M. Regan, Consultant  
8625 Farmington Cemetery Road  
Pleasant Plains, IL 62677

## **PRESENT POSITION**

William Dunkel and Associates  
Position: Consultant

- Testified on behalf of the Maryland Office of the People's Counsel before the Maryland Public Service Commission in a Universal Service proceeding involving Verizon-Maryland, Case No. 8745.
- Testified on behalf of the Government and Consumers Intervenors (GCI) before the Illinois Commerce Commission in an Alternative Regulation case involving Ameritech Illinois, Docket No. 98-0252, in which I addressed economic principles.
- Filed testimony on behalf of the New Mexico Public Regulation Commission in a subsidy case involving VALOR Communications, Case No. 3300, in which I addressed economic principles.
- Testified on behalf of the New Mexico Public Regulation Commission Staff in a subsidy case involving Qwest Communications, Case No. 3325, in which I addressed economic principles.
- Filed testimony on behalf of the Staff of the Arizona Corporation Commission in a general rate case involving Qwest Communications, Docket No. T-01051B-99-0105, in which I addressed economic principles.
- Filed testimony on behalf of the Pennsylvania Office of Consumer Advocate in a case involving Bell Atlantic-Pennsylvania, Docket No. R-953409 in which he addressed stimulation as a result of toll price reductions.
- Testified on behalf of the Colorado Office of Consumer Counsel in a rate rebalancing case involving U.S. West Communications, Inc., Docket No. 96S-257T et al.

-Participated, but did not testify in, the following proceedings:

- Missouri Docket No. TR-2001-65 (Cost of Access Proceeding)
- Kansas Docket No. 02-JBNT-846-AUD (Audit and General Rate Proceeding)
- Kansas Docket No. 02-BLVT-377-AUD (Audit and General Rate Proceeding)
- Kansas Docket No. 02-S&TT-390-AUD (Audit and General Rate Proceeding)
- Kansas Docket No. 02-WLST-210-AUD (Audit and General Rate Proceeding)
- Kansas Docket No. 02-HOMT-209-AUD (Audit and General Rate Proceeding)
- Kansas Docket No. 01-CRKT-713-AUD (Audit and General Rate Proceeding)
- Kansas Docket No. 01-SFLT-879-AUD (Audit and General Rate Proceeding)
- Kansas Docket No. 01-BSST-878-AUD (Audit and General Rate Proceeding)
- Kansas Docket No. 01-PNRT-929-AUD (Audit and General Rate Proceeding)
- Kansas Docket No. 01-SNKT-544-AUD (Audit and General Rate Proceeding)
- New Mexico Case No. 3223 (Universal service fund proceeding)
- Arizona Docket No. T-00000A-00-0194 (Wholesale cost/UNE proceeding of Qwest)
- Arizona TX 98-00716 (Tax Case of Citizens Telecommunications Company of White Mountain, et. al.)
- Maryland Case No. 8862 (PIC change charge case of Verizon Maryland)
- New Mexico Case No. 3008 (General Rate/Depreciation case of USWest)
- Arizona Docket No. T-01051B-97-0689 (Depreciation case of US West)
- Illinois Docket No. 99-0412 (EAS case involving Geneseo Telephone Company)
- Kansas Docket No. 98-SWBT-677-GIT (State USF case involving SWBT)
- Kansas Docket No. 00-UTDT-455-GIT (State USF case involving Sprint)
- Arizona Docket No. T-02724A-00-0595 (Earnings Review of Table Top Telephone Co.)
- Missouri Docket No. TO-98-329 (USF case involving SWBT)
- Ohio Docket No. 97-1657-TP-UNC (Access charge case involving Ameritech Ohio)
- Illinois Docket Nos. 98-0200/98-0537 (Consolidated) (Usage sensitive service of GTE)
- Florida Undocketed Special Project (Fair and Reasonable Rates of BellSouth, GTE, and Sprint)
- Pennsylvania Docket No. A-310125F002 (GTE North Interconnection Proceeding)
- Washington Docket UT-960369 (US West Communications, Inc. Interconnection Case)
- Utah Docket No. 97-049-08 (US West Communications, Inc. General Rate Case)
- Oklahoma Cause No. PUD 96-0000214 (Public Service of Oklahoma Depreciation Case)



- Hawaii Docket No. 7702 (GTE Hawaiian Tel General Rate Case)
- Washington Docket UT-950200 (US West Communications, Inc. General Rate Case)
- Pennsylvania Docket R-00953409 (Bell Atlantic Toll Automatic Savings Plan)
- Pennsylvania Docket R-00963550 (Bell Atlantic Rate Rebalance Proceeding)
- Iowa Docket RPU-95-11 (US West Communications, Inc. General Rate Case - Withdrawn by USWC just prior to hearings)
- Arizona Docket E-1051-93-183 (US West Communications, Inc. General Rate Case - Remand)
- Colorado Docket 95S-523T (US West Communications, Inc. CustomChoice Case - Withdrawn)
- Utah Docket 95-049-05 (US West Communications, Inc. General Rate Case)
- Iowa Docket RPU-95-10 (US West Communications, Inc. Interconnection Case)
- Hawaii Docket 94-0298 (General Telephone and Electronics (GTE) Depreciation Case)
- Indiana Cause No. 39938 (Indianapolis Power and Light Company - Depreciation Case)

Participation in the above proceedings included some or all of the following:

Developing analyses, writing draft testimony, preparing data requests, analyzing issues, analyzing economic costs and principles, price elasticity and other economic issues, writing draft testimonies, preparing data requests and responses, preparing draft questions for cross-examination, drafting briefs, and developing various quantitative and economic models

Member of the Economic Advisory Board at the University of Illinois-Springfield.

### **PREVIOUS EMPLOYMENT**

Sangamon State University  
Graduate Assistant

- Prepared research projects on various economic topics
- Formed theoretical and statistical models
- Analyzed results of empirical models
- Formulated policy recommendations based on results.
- Worked with students

### **EDUCATION**

Master of Arts in Economics from Sangamon State University in Springfield, Illinois  
GPA 3.97/4.0

Bachelor of Arts in Liberal Arts Economics from University of Illinois, Urbana, Illinois  
Relevant Coursework:

- |                                    |                          |
|------------------------------------|--------------------------|
| -Mathematics and Calculus          | -Economics in Management |
| -Statistical Analysis              | -International Economics |
| -Accounting/Financial Analysis     | -Environmental Economics |
| -Economic and Statistical Modeling | -Marketing               |

Academic Awards and Honors:

- Phi Theta Kappa Honor Fraternity
- Economics Marshall Award
- Omicron Delta Epsilon Economics Honor Society
- Who's Who at America's Colleges and Universities
- Outstanding Student in Economics Award
- Highest graduate GPA in history of Economics program